

### **REMARKS**

As an initial matter, Applicants wish to thank the Examiner and his supervisor for the consideration extended in the interview granted on September 16, 2010. Applicants have amended the specification along the lines discussed during the course of that interview. Applicants understand that the claims are now in condition for allowance. If any further issues arise, the Examiner is respectfully requested to contact the undersigned attorney before issuing an Office action.

Claims 1-3, 5, and 7-13 are pending and rejected. Claims 4 and 6 have been canceled without prejudice or disclaimer. Accordingly, upon entry of this paper, claims 1-3, 5, and 7-13 remain pending.

#### **Support for the Amendments**

Support for the amendments is found in the specification and claims as originally filed. In particular, support for the corrected Table inserted at page 12 is found in Applicants' specification at pages 11-13. No new matter is added.

#### **Rejections under 35 U.S.C. § 112, first paragraph**

Claims 1-3, 5 and 7-13 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly lacking an adequate written description. The Office Action at page 2 alleges that deleting the Table at page 12 of the original filed specification results in the specification lacking an adequate written description. Applicants traverse and respectfully disagree, but nevertheless have inserted a corrected Table in accordance with the Examiner's recommendation.

As discussed during the course of the interview, the Table appearing at page 12 of the specification was generated by Applicants' prior counsel. It was intended to describe the results presented in the text of the application, but due to a clerical error the Table presents nothing more than a jumble of numbers and dates whose correspondence is entirely unclear. One of skill in the art would recognize, as the Examiner did, that the Table is unintelligible, and would look instead to the results described in Applicants' specification. Furthermore, the declaration of Gene Probasco submitted with Applicants' response mailed January 19, 2010 describes the field trial supervised by Mr. Probasco and described in the specification as filed

at pages 11-13, thus verifying the results described in the specification at pages 11-13 and the corrected Table at page 12 submitted herewith.

At pages 10, line 6 to page 11, and from page 12, last two lines, to page 13, line 13, Applicants' specification describe field test results where applying an emulsion comprising an emulsifier, soap, and hop beta acids to an agricultural crop was effective to kill mites and to control powdery mildew. In particular, 1% beta acid emulsions were applied on June 20, June 26, July 3, July 10, July 26, August 6 and August 15 (page 11, second full paragraph). The 100 and 200 gallon applications resulted in 100% kill on lower leaves and 85% kill on lower leaves (page 12, text at bottom of page). The 15 gallon application resulted in 50% kill rate on lower leaves and less than 50% kill on upper leaves (page 13, lines 1 and 2). The corrected Table recites these results.

Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph.

#### **Rejections under 35 U.S.C. § 103(a)**

Claims 1-3, 5 and 7-13, which are directed to methods for controlling spider mites and powdery mildew by applying an emulsion comprising an emulsifier, soap, and hop beta acids to an agricultural crop, are rejected under 35 U.S.C. 103(a) as allegedly unpatentable over Jones et al. (Pestic. Sci. 47:165-169, 1996; "Jones"). Applicants respectfully traverse the rejection.

Jones describes producing ethanolic solutions that contain hop beta acids. Jones fails to describe aqueous emulsions of hop acids and as such, Applicants submit that a *prima facie* case of obviousness has not been established. Nonetheless, as discussed during the interview, such emulsions are surprisingly effective at controlling spider mites, downy mildew, and powdery mildew due to their unexpected stability relative to solutions of hop acids. Such activity has been previously discussed in the declaration of Gene Probasco submitted with Applicants' January 19, 2010 response. Applicants submit that such showing of unexpected results is sufficient to overcome an obviousness rejection (see, *In re Albrecht*, 514 F.2d 1389, 1396; 185 USPQ 585,590 (CCPA 1975)). Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 in view of Jones.

The Office has cited Parsons et al., U.S. Patent Application No. 2004/0091558 ("Parsons") and Locke et al., US Patent No. 5,372,817 ("Locke") to remedy the deficiencies

of Jones. None of the remaining references remedies the deficiencies of Jones because none describes aqueous emulsions of hop acids. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. § 103 in view of Jones, Parsons, and Locke.

### CONCLUSION

In view of the foregoing arguments, Applicants respectfully request reconsideration and withdrawal of all pending objections/rejections and allowance of the application. Should any of the claims not be found to be allowable, the Examiner is requested to telephone Applicants' undersigned representative at the number below. Applicants thank the Examiner in advance for this courtesy.

The Commissioner is authorized to charge Deposit Account No.: 04-1105 referencing Docket No: 61842CIP(51035) the fee for a three-month extension based upon small entity status. No additional fee is believed due, however, if an additional fee is due, the Director is hereby authorized to charge any credits or deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105, under Order No. 61842CIP(51035).

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Respectfully submitted,  
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